

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re REY R. et al., Persons Coming Under  
the Juvenile Court Law.

B219440  
(Los Angeles County  
Super. Ct. No. CK69518)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.R.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County.  
Jacqueline Lewis, Juvenile Court Referee. Affirmed.

Christy C. Peterson, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Office of County Counsel, James M. Owens, Assistant County Counsel, O. Raquel  
Ramirez, Deputy County Counsel, for Plaintiff and Respondent.

---

C.R. (Mother) appeals from an order terminating her parental rights to two of her four children. Mother asserts the “sibling relationship” exception to the legislative preference for adoption. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(v).) Substantial evidence supports the juvenile court’s determination that adoption would not detrimentally interfere with a significant sibling relationship, and that the benefits of gaining a permanent home outweigh the importance of the sibling relationship.

### **FACTS**

Mother is the parent of Carlos T. (born 2002), Alaina T. (2005), Rey R. (2006) and Fernando R. (2007).<sup>1</sup> The family came to the attention of the Department of Children and Family Services (DCFS) when Fernando was born in March 2007. In the hospital, at the time of delivery, Mother and Fernando tested positive for amphetamines. Mother admitted that her drugs of choice are methamphetamines and marijuana, and she has used them since age 17, even during pregnancy. DCFS did not remove the children from Mother’s care. Instead, it implemented a voluntary family maintenance plan that included random drug testing and enrollment in a drug rehabilitation program.

On August 2, 2007, Mother tested positive for amphetamines and methamphetamines. The four children were removed from her custody and placed in the care of Angelica F., a paternal cousin of Fernando. At the time of removal, Fernando was four months old and Rey was 16 months old. Within a month, Rey was moved to the home of his paternal cousin, Jeanette G.

On August 14, 2007, DCFS filed a dependency petition. The juvenile court found a prima facie case for detaining the children. The court ordered monitored visitation, as well as drug testing and counseling for the parents, and domestic violence counseling for Fernando’s father, Fernando Sr. At the jurisdiction hearing on November 15, 2007, the court sustained allegations that Mother has a history of drug abuse and is a current abuser of amphetamines, methamphetamines and marijuana, rendering her incapable of

---

<sup>1</sup> Though Rey and Fernando are the subjects of this appeal, the older children are discussed in this opinion to determine the extent of the sibling relationship.

providing regular care and supervision of the children and endangering their physical and emotional health. Fernando was placed in the custody of Fernando Sr.; Carlos and Alaina were placed with Angelica F.; and Rey was placed with Jeanette G.

On November 28, 2007, Mother was expelled from her sober living program because she drank a beer. Fernando Sr. did not make arrangements to pick up his child, who remained with the foster caregiver. After he finally retrieved Fernando at the end of November, Fernando Sr. called Angelica F. within a week to say that “he could no longer take care of the baby and he wanted to return the baby” to her. Thus, in March 2008, Carlos, Alaina and Fernando remained with Angelica F., and Rey was with Jeanette G. Mother was arrested in Washington. Although Mother enrolled in a drug program in that state, her counselor informed DCFS that Mother was “inconsistent with the program and always called in sick.”

With regard to the well-being of the children, DCFS reported that Carlos was “parentified” and wanted to be in charge of the family. Alaina was described as a “friendly child” who has been “acting out sexually” in the caregiver’s home: she was found in baby Fernando’s crib and “was trying to stick the baby’s pee-pee with her pee-pee” to emulate Mother’s sexual activities. DCFS directed the caregiver to seek counseling for Alaina. Rey was a happy, playful and friendly two-year-old. One-year-old Fernando was happy and healthy, and could coo and crawl. In March 2008, DCFS reported that “[t]he children appear closely bonded with one another and participate in bi-weekly sibling visitation.”

DCFS filed a subsequent petition alleging that Fernando Sr. had a positive test for marijuana on January 8, 2008, and that he was “unwilling to provide the child with ongoing care and supervision, and has requested the child’s removal” from his home. The father’s abuse of drugs and his unwillingness to care for Fernando place the child at risk of harm. In a detention report, DCFS indicated that Fernando Sr. was “a consistent no-show” for drug testing. Further, he told Angelica F. that he was unable to take care of Fernando, and was doing badly. On March 25, 2008, the court found a prima facie case

for detaining Fernando, and vested custody with DCFS. Fernando remained placed with his cousin Angelica F.

A pediatric evaluation was performed on Rey. The evaluation notes that Rey “was exposed to methamphetamines” during Mother’s pregnancy. The foster mother disclosed that Rey often bangs his head against a wall and hits himself with toys when upset. Rey he was hospitalized during infancy due to a lung infection and his femur was not fully developed. He was being treated by an orthopedist for the malformation. The evaluator determined that Rey was developing appropriately, but recommended that he see an ophthalmologist to address vision and balance problems, and receive counseling for behavioral concerns. An evaluation of Fernando indicated that he was “attached” to Angelica F. “as he will often cry when she leaves the room and wants to be held by her frequently.”

In April 2008, DCFS reported that Fernando Sr. had not contacted the social worker or seen Fernando since January 2008. DCFS sought to terminate reunification services for Mother, and to institute reunification services for Fernando Sr. At a hearing in May 2008, the court found that Mother had made “minimal” progress: she has not consistently or regularly visited the children, nor has she demonstrated the capacity to complete the objectives of the treatment plan or provide for the children’s health and needs. Accordingly, the court terminated Mother’s reunification services, and set a permanent plan hearing as to Carlos, Alaina and Rey. As to Fernando Sr., the court sustained the allegations regarding his drug abuse and his inability to provide care for Fernando. He was ordered to attend parent education and a drug rehabilitation program with random drug testing.

In June 2008, DCFS reported that Carlos, Alaina and Fernando remained with Angelica F. while Rey was placed with Jeanette G. The children “appear closely bonded with one another and participate in bi-weekly sibling visitation.” In September 2008, DCFS reported that Mother was incarcerated in Washington; the father of the older children was incarcerated in Arizona; and Fernando Sr. was incarcerated in California.

Carlos and Alaina were now living with a different foster family, not with Fernando or Rey.

The paternal grandmother of Carlos and Alaina was assessed and found to be a suitable prospective adoptive parent. In addition, Angelica F. expressed a desire to adopt Fernando, because he is a blood relative, and Jeanette G. wished to adopt Rey. Rey has special needs that require a certain diet, and he is frequently sick.

At a hearing on December 17, 2008, the court terminated reunification services for Fernando Sr., who had not been in touch with his son or with DCFS for nearly a year and had made no progress toward completing the case plan. The court set a permanent plan hearing for Fernando, who remained in the home of Angelica F. Mother was recently released from prison in Washington and sought to resume visitation with the children. She had not seen the children for over a year.

DCFS submitted a report in April 2009 for the permanent plan hearing. It reported that the family of Angelica F. was “very bonded” with two-year-old Fernando, who they regard as their own child. He has lived with them continuously since August 2007, except for one week when Fernando Sr. had custody of the child. Fernando “has frequent contact and visitation” with his siblings, who were recently united to celebrate Fernando’s birthday. Angelica F. and her husband applied to adopt Fernando, who refers to them as “mama” and “dada.” Mother did not attend the April 2009 hearing because she was incarcerated, as were both fathers. The matter was continued for a contest.

In August 2009, DCFS reported that Rey’s caregivers are “eager” to adopt him. The court approved a long visit by Carlos and Alaina with their paternal grandmother in Washington, who was interested in adopting them. The caretakers for Fernando and Rey were approved for adoption after home studies were completed.

The contested permanent plan hearing was conducted on September 23, 2009. Mother, who was in federal prison, submitted a letter to the court asking for another chance and promising to do everything necessary to regain custody of the children. She was opposed to Carlos and Alaina being moved to Washington because it would curtail the children’s ability to see each other. This was the first time that Mother objected to the

children having separate placements. The attorney for the four children asked that parental rights be terminated as to Fernando and Rey: both boys are thriving in their current placements.

The court found that Fernando and Rey are adoptable and their caretakers are committed to them. The two boys have a “very minimal” relationship with their biological parents, who did not maintain regular visitation. The court “thought long and hard” about the sibling relationship. Rey has special needs and since the outset of the case, was separately placed. Now, Fernando and Rey “have such a strong bond to their prospective adoptive mothers or parents that it would be very detrimental to them to be moved.” The court acknowledged that there was “somewhat of a sibling relationship,” but “these children have not spent long, long periods of time in the same house with each other.” As a result, the benefit of adoption “far outweighs the benefit of a continued sibling relationship here.” The court terminated parental rights as to Fernando and Rey and referred them for adoptive planning.

## **DISCUSSION**

### **1. Standard of Review**

Mother appeals from the order terminating her parental rights. On appeal, we determine if there is any substantial evidence to support the conclusions of the juvenile court. All conflicts are resolved in favor of the prevailing party and all legitimate inferences are drawn to uphold the lower court’s ruling. (*In L.Y.L.* (2002) 101 Cal.App.4th 942, 947.) We cannot reweigh the evidence or substitute our judgment for that of the trial court. (*Ibid.*; *In re Jamie R.* (2001) 90 Cal.App.4th 766, 774.)

### **2. Adoption Is the Preferred Plan, Absent a Showing of Detriment**

At the selection and implementation hearing, the court must select adoption as the permanent plan and terminate parental rights if it finds that the child is likely to be adopted. (Welf. & Inst. Code, § 366.26, subd. (c)(1); *In re Celine R.* (2003) 31 Cal.4th 45, 49 (*Celine*); *In re Jamie R.*, *supra*, 90 Cal.App.4th at p. 773.) Adoption is the permanent plan preferred by the Legislature. (*In re Derek W.* (1999) 73 Cal.App.4th 823,

826; *In re Ronell A.* (1995) 44 Cal.App.4th 1352, 1368.) Mother does not dispute that the children are likely to be adopted.

A parent may avoid termination of parental rights by showing that it would be detrimental to the child. (*Celine, supra*, 31 Cal.4th at p. 53.) Mother contends that it would be detrimental to terminate parental rights because her children have a sibling bond that should remain intact. Mother bears the burden of proving both the existence of the sibling relationship and that its severance would be detrimental to the children. (*In re Valerie A.* (2006) 139 Cal.App.4th 1519, 1523.)

### **3. The Sibling Relationship Exception**

The court may find “a compelling reason for determining that termination would be detrimental to the child” if “[t]here would be substantial interference with a child’s sibling relationship . . . .” (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(v).) In making this determination, the court may consider: (1) the nature and extent of the relationship; (2) whether the child was raised with a sibling in the same home; (3) whether the child shared significant common experiences or has existing close and strong bonds with a sibling; and (4) whether ongoing contact is in the child’s best interest, as compared to the benefit of legal permanence through adoption. (*Ibid.*)

The sibling relationship exception imposes “‘a heavy burden on the party opposing adoption.’” (*Celine, supra*, 31 Cal.4th at p. 61.) “To show a substantial interference with a sibling relationship the parent must show the existence of a significant sibling relationship, the severance of which would be detrimental to the child. Many siblings have a relationship with each other, but would not suffer detriment if that relationship ended. If the relationship is not sufficiently significant to cause detriment on termination, there is no substantial interference with the relationship.” (*In re L.Y.L., supra*, 101 Cal.App.4th at p. 952, fn. omitted.) And, “even if adoption would interfere with a strong sibling relationship, the court must nevertheless weigh the benefit to the child of continuing the sibling relationship against the benefit the child would receive by gaining a permanent home through adoption.” (*Celine, supra*, 31 Cal.4th at p. 61.) A child’s sibling relationship is “rarely” sufficiently strong to outweigh the benefits of

adoption. (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 950; *In re Daisy D.* (2006) 144 Cal.App.4th 287, 293.) “[T]he sibling relationship exception permits the trial court to consider the possible detriment to the child being considered for adoption, but not a sibling of that child.” (*Celine*, *supra*, 31 Cal.4th at p. 54.)

#### **4. Application of the Sibling Relationship Exception**

There is no persuasive evidence in the record that the two younger children have such a significant bond with their siblings that they should not be adopted. Rey has lived in a separate placement, away from his siblings, since he was 16 months old. During infancy, it is unlikely that Rey developed a strong bond with his siblings. After his removal from Mother’s custody, Rey visited his siblings “biweekly” but did not live with them.<sup>2</sup> Even if he enjoyed those visits, there is no evidence that he would suffer if the visits ceased. (See *In re Daisy D.*, *supra*, 144 Cal.App.4th at p. 293.) Given his young age when he was detained, “the conclusion [is] virtually compelled” that Rey was not raised in the same home as his siblings and they do not have significant common experiences or a strong bond. (See *Celine*, *supra*, 31 Cal.4th at p. 61; Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(v).)

In addition, Rey has special medical needs that his caretaker is addressing, and he is thriving with her. Rey is too young to remember his family life with Mother and his siblings. Now that Rey is four years old, it would be cruel to take him away from the only permanent family he knows.

Fernando was placed in the home of Angelica F. when he was four months old. As with Rey, Mother is a virtual stranger to him. Fernando was originally placed with his two older siblings, though this placement ended in August 2008, when Carlos and Alaina were moved to a different foster family, and then to their grandmother in Washington. It is likely that Fernando has more of a sibling relationship with Carlos and Alaina than Rey has. Although the early DCFS reports described a “close bond” between the siblings,

---

<sup>2</sup> “Biweekly” means “once every two weeks.” (American Heritage Dict. (2d college ed. 1982) p. 175.)



later reports did not mention a close bond, once the children were no longer living together with Angelica F.

Fernando calls his caregivers “mama” and “dada” and is thriving with them. He is attached to Angelica F., cries when she leaves the room, and wants to be held by her frequently. The dependency court “reasonably discounted the importance of the sibling relationship” between Fernando and his siblings “even if it was important to the older child[ren], and, as does the Legislature generally, it valued more [his] ‘ability to belong to a family.’” (*Celine, supra*, 31 Cal.4th at p. 61.) No psychological or eyewitness testimony demonstrated that Fernando would suffer a detriment if his relationship with his siblings ended.

In sum, the record supports the dependency court’s finding that the benefit of permanent adoptive homes outweighs the significance of the sibling relationship in this case. There is no evidence of a recent, close bond between the two boys and their older siblings that would be substantially interfered with if they were adopted. Both Fernando and Rey have spent virtually their entire lives with the same caregivers, and view the caregivers as parents. It would be detrimental to Fernando and Rey to destroy this familial relationship.

### **DISPOSITION**

The judgment is affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.**

BOREN, P.J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.